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August 25, 2014

Jack Zeigler
Policy and Rules Manager
Department of Enterprise Services
1500 Jefferson
Olympia, WA 98501

Dear Mr. Zeigler:

I am writing on behalf of my clients, including the Wasington State HVACR Association, to strongly oppose **WSR 14-16-122** and **WAC 200-380 010-030** proposed by the Department of Enterprise Services (DES). We totally opposes DES adopting a rule to authorize the DES to adopt guidelines to implement state legislation, agency policies, and procedures in lieu of adopting rules in accordance with the state's Administrative Procedures Act (APA). The Administrative Procedures Act was established to insure complete public notice of new or amended agency policy or procedures, ensure a public comment period, ensure compliance with the state Regulatory Fairness Act, ensure a responsiveness summary by an agency with respect to proposed rules and comments from the public, and to en-sure the authority of the courts and the Legislature to review the policies and procedures adopted by an agency. The proposed DES rule circumvents all of these citizen, stakeholder, and public protection contained in the APA as it is now in law.

We oppose **WSR 14-16-122** as it sets a new precedent in Washington State that circumvents the intent of the Governor, the Legislature, and the Administrative Procedures Act.

We would note that as of today, there does not exist anywhere to be found *Print Management Guidelines*, and yet RCW 34.05.365 contains very specific requirements regarding the inclusion of material by reference in a rule-

"An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available."

-and this proposal clearly falls short of those legal requirements.

Although RCW 43.19.742 does refer to rules and guidelines, it does not authorize guidelines in place of rules, nor guidelines with the power of rules. Guidelines are suggestive, voluntary- even

wise- but they are not mandatory. Inclusion by reference in a rule should not be allowed to make them so.

Comparing this proposed rule to the draft rule developed through the stakeholder process last fall, and to the draft guidelines shared with stakeholfers in June of this year, it is clear that this rules proposal is like the ten percent of the iceberg that is visible- leaving the ninety percent relegated to guidelines invisible to the public. In fact, absent the attempt to give guidelines the force of rule, there is no content in the proposed rule requiring the adoption of the proposed rule.

The consensus work product of state agency and private sector stakeholders as agreed to last December is attached for comparison. It is easy to see much more than is included in the current proposed rule. Why this consensus of stakeholders was rejected in favor of an arbitrary and capricious guidelines process leaves the department's motivation in question.

Throughout the discussions on thus issue over the past several years, every time there has been a stakeholder consensus, it has been rejected by the department in favor of an approach repeatedly rejected by the stakeholders but still; insisted upon by department personnel. This guidelines approach simply reinforces the belief that department personnel are detertmined to have their way, regardless of stakeholder views, and believe they have found a means of evading public and legislative scrutiny in doing so.

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